

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HUGO ZUNIGA,

Plaintiff,

**VS.**

LAWRENCE F. MURRAY,  
DIANE DOMBACH,  
JEFFREY BEARD and  
ALL UNNAMED MEMBERS OF THE  
PA BOARD OF PROBATION AND  
PAROLE,

## Defendants

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CIVIL NO. 3:06-CV-00252

(JUDGE KOSIK)

## MEMORANDUM AND ORDER

AND NOW, THIS 9<sup>th</sup> DAY OF JANUARY, 2007, IT APPEARING TO THE COURT  
THAT:

1. Plaintiff, Hugo Zuniga, a prisoner confined at SCI-Frackville, filed the instant civil rights action pursuant to 42 U.S.C. § 1983 on February 2, 2006;
2. The matter was assigned to Magistrate Judge J. Andrew Smyser;
3. On October 3, 2006, the Magistrate Judge issued a Report and Recommendation addressing the plaintiff's motions for default judgment. In particular, the Magistrate Judge found that the defendants filed a motion to dismiss, or in the alternative for summary judgment, and an untimely brief in support thereof. Defendants were given an opportunity to refile the motion and brief, which have been accepted by the court. Because this was not a case where defendants did not respond to the complaint in any manner, the Magistrate Judge found that default judgment was not warranted and recommended that the plaintiff's motions for default judgment be denied; see also, 42 U.S.C. §1997e(g)(1);

4. No objections were filed to the Magistrate Judge's Report and Recommendation and on October 27, 2006, plaintiff filed a brief in opposition to defendants' motion to dismiss;

AND, IT FURTHER APPEARING THAT:

5. If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

6. We have considered the Magistrate Judge's Report and we agree with the recommendation.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation of Magistrate Judge J. Andrew Smyser dated October 3, 2006 (Document 27) is adopted;

2. The plaintiff's motions for default judgment (Documents 13 and 23) are denied; and

3. The above-captioned action is remanded to the Magistrate Judge for further proceedings.

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s/Edwin M. Kosik  
United States District Judge